

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 01-O-00973 (02-O-10223;
)	02-O-11334; 02-O-12079);
)	02-H-14163 (Cons.)
JOSEPH FELIX McNULTY,)	
)	
)	DECISION AND ORDER SEALING
Member No. 151907,)	CERTAIN DOCUMENTS
)	
)	
<u>A Member of the State Bar.</u>)	

On January 28, 2005, the State Bar of California, Office of the Chief Trial Counsel (State Bar) filed formal disciplinary charges against respondent Joseph Felix McNulty (respondent) in the above-entitled matter. This matter was assigned to the Honorable Richard A. Platel, and on April 13, 2005, Judge Platel issued an order referring this matter to the State Bar Court's Alternative Discipline Program (ADP) before the undersigned judge.

Thereafter, on April 19, 2005, respondent contacted the State Bar of California's Lawyer Assistance Program (LAP) to assist him with his substance abuse issues, and on October 21, 2005, respondent executed a Participation Plan with the LAP.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in this matter on October 21, 2005.

On December 2, 2005, respondent submitted to the court a first amended declaration establishing a nexus between his substance abuse issues and his misconduct.

On February 8, 2006, the court lodged its Confidential Statement of Alternative Dispositions and Orders, the Contract and Waiver for Participation in the State Bar Court's ADP (Contract),¹ and the parties' Stipulation, and respondent was accepted into the ADP as of this date.

Effective November 5, 2008, respondent was involuntarily enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6233. On January 5, 2009, the court filed an order, effective that date, terminating respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6233.

On August 25, 2009, the court issued an order finding that respondent has successfully completed the ADP. Thereafter, on that same date, the parties' Stipulation was filed, and this matter was submitted for decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In this consolidated matter, respondent stipulated that he willfully: (1) disobeyed court orders in violation of Business and Professions Code section 6103²; (2) failed to cooperate in a disciplinary investigation in violation of section 6068, subdivision (i) (four matters); (3) violated section 6103 and rule 1-110 of the Rules of Professional Conduct³ by failing to comply with a court order regarding a condition attached to a private reproof; (4) violated rule 3-110(A) by intentionally, repeatedly or recklessly failing to perform legal services with competence (two matters); (5) violated section 6068, subdivision (m), by failing to promptly respond to reasonably

¹ The Contract was executed by respondent and his counsel on February 8, 2006.

² Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

³ Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

client status inquiries (one matter) and by failing to keep a client reasonably informed of significant developments in a matter in which he had agreed to provide legal services (two matters); and (6) failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client in willful violation of rule 3-700(A)(2) (two matters). There are no mitigating circumstances.

In aggravation, respondent has a prior record of discipline. Effective November 15, 2000, respondent received a private reproof with conditions for one year as a result of violations of sections 6068(o)(3) and 6013 (State Bar Court case no. 99-O-11764). In addition, respondent's multiple acts of misconduct were considered an aggravating circumstance, and his misconduct significantly harmed a client, the public or the administration of justice.

The parties' Stipulation, including the court's order approving the stipulation as modified, is attached hereto and hereby incorporated by reference, as if fully set forth herein. The Stipulation sets forth the factual findings, legal conclusions, and aggravating circumstances in this consolidated matter.

Furthermore, at the time respondent engaged in his misconduct, he was suffering from substance abuse issues, and respondent's substance abuse issues directly caused or contributed to the misconduct which forms the basis for this proceeding. Supreme Court case law establishes that an attorney's rehabilitation from alcoholism or other substance abuse problems can be accorded significant weight if it is established that (1) the abuse was addictive in nature; (2) the abuse causally contributed to the misconduct; and (3) the attorney has undergone a meaningful and sustained period of rehabilitation. (*Harford v. State Bar* (1990) 52 Cal.3d 93, 101; *In re Billings* (1990) 50 Cal.3d 358, 367.)

Respondent executed a Participation Plan with the LAP on October 21, 2005.⁴ The LAP issued a One Year Certificate dated January 27, 2009, which reflects that for at least the one year period prior to this date, no use of unauthorized substances by respondent was detected.

Respondent also successfully completed the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the One Year Certificate from the Lawyer Assistance Program, qualify as clear and convincing evidence that respondent no longer suffers from the substance abuse issues which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a mitigating circumstance in this matter. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(iv).)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, to preserve public confidence in the legal profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

After reviewing respondent's brief on the issue of discipline, which was received by the court on November 28, 2005, and the State Bar's brief on the issue of discipline, which was received by the court on November 30, 2005, and considering the Standards for Attorney Sanctions for Professional Misconduct (standard(s)) and case law cited therein, the parties' Stipulation setting forth the facts, conclusions of law, and the aggravating circumstances in this matter, and respondent's first amended declaration regarding the nexus between his substance abuse issues and his misconduct, the court advised the parties of the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and the

⁴ Although respondent executed a LAP Participation Plan on this date, he initially contacted the LAP on April 19, 2005.

discipline which would be recommended if respondent was terminated from, or failed to successfully complete, the ADP.

In determining the appropriate discipline to recommend in this matter if respondent successfully completed the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. Respondent recommended that he receive a public reproof. In contrast, the State Bar recommended, among other things, a three-year stayed suspension; three years' probation; and no less than a 90-day actual suspension. The court also considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7(a), 2.4(b), 2.6, 2.9 and 2.10 and the case law cited in the parties' discipline briefs, including *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, *Conroy v. State Bar* (1991) 53 Cal.3d 495, and *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131.

After agreeing to the discipline which the court would recommend to the Supreme Court if respondent successfully completed or was terminated from, or failed to successfully complete, the ADP, respondent executed the Contract to participate in the ADP; the Contract was lodged with the court; and respondent's period of participation in the ADP commenced.

Thereafter, respondent successfully participated in the ADP and, as set forth in the court's August 25, 2009 order, the court found that respondent has successfully completed the ADP. Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the court's Confidential Statement of Alternative Dispositions and Orders if respondent successfully completed the ADP.

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent **JOSEPH FELIX McNULTY**, State Bar Number 151907, be suspended from the practice of law in California for two (2) years,

that execution of that period of suspension be stayed, and that he be placed on probation for a period of three (3) years subject to the following conditions:

1. Respondent Joseph Felix McNulty is suspended from the practice of law for the first 60 days of probation⁵ (with credit given for the period of inactive enrollment pursuant to Business and Professions Code section 6233 which commenced on November 5, 2008, and ended on January 5, 2009).
2. Respondent Joseph Felix McNulty must also comply with the following additional conditions of probation:
 - a. During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
 - b. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
 - c. Within thirty (30) days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;
 - d. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next quarter date, and cover the extended period.

⁵ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of the probation period;

- e. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions;
- f. Within one (1) year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session. Providing proof to the Office of Probation that respondent attended Ethics School and passed the test given at the end of such session during his period of participation in the ADP will satisfy this condition of probation; and
- h. Respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement/Plan to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP.

- 3.** At the expiration of the period of probation, if Joseph Felix McNulty has complied with all conditions of probation, the two (2) year period of stayed suspension will be satisfied and that suspension will be terminated.

It is also recommended that Joseph Felix McNulty take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court's disciplinary order in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure of the State Bar of California (Rules of Procedure), all other documents not previously filed in this matter are ordered sealed pursuant to rule 23 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: September ____, 2009

RICHARD A. HONN
Judge of the State Bar Court